

§ 301.7430-6

each of the subsequent four years. The deduction for the seminar attended by B was reported on the return in question in the amount of \$X. The Internal Revenue Service's position is that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service determines adjustments of two-fifths \$X (the difference between the Internal Revenue Service's position of two-fifths \$X and the reported four-fifths \$X) regarding the basis of the covenant not to compete, and \$X resulting from the disallowance of the seminar expense. Thus, of the two adjustments determined for the year under audit, that attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. However, due to the impact on the next succeeding four years, the covenant not to compete adjustment is objectively the most significant issue to both B and the Internal Revenue Service.

Example 3. The Collection Branch of a Service Center of the Internal Revenue Service determines in the matching process of various Forms 1099 and W-2 that taxpayer C has not filed an individual income tax return. The Internal Revenue Service sends notices to C requesting that C file an income tax return. C does not file a return, so the Service Center's Collection Branch prepares a substitute for return pursuant to section 6020(b). The calculation is sent to C requesting that C either sign the return pursuant to section 6020(a) or file a tax return prepared by C. C does not respond to the Internal Revenue Service's request and the Service Center's Collection Branch issues a notice of deficiency based on information in its possession. C does not file a petition with the Tax Court and does not pay the asserted deficiency. The Internal Revenue Service then assesses the tax shown on the notice of deficiency and issues a notice and demand for tax pursuant to section 6303. After receiving notice and demand, C contacts the Collection Branch and convinces Collection to stay the collection process because C does not owe any taxes. The Collection Branch recommends that the Examination Division examine the tax liability and make an adjustment to income. The Examination Division then redetermines the tax and abates the assessment due to information and arguments presented by C at that time. The costs C incurred before the Collection Branch are incurred in connection with an action taken by the Internal Revenue Service to collect a tax. Therefore, these costs are incurred with respect to a collection action and not an administrative proceeding. Accordingly, they are not recoverable as reasonable administrative costs. Costs incurred before the Examination Division are reasonable administrative costs; however, C may not recover any reasonable administrative costs with respect to the proceeding before the Examina-

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tion Division because, as of the date the costs were incurred, C had not previously presented all relevant information under C's control and all relevant legal arguments supporting C's position to the Collection Branch or Examination Division personnel (the appropriate Internal Revenue Service personnel under § 301.7430-5(c)), and thus, the position of the Internal Revenue Service was substantially justified based upon the information it had.

[T.D. 8542, 59 FR 29364, June 7, 1994, as amended by T.D. 8725, 62 FR 39119, July 22, 1997]

§ 301.7430-6 Effective dates.

Sections 301.7430-2 through 301.7430-6, other than §§ 301.7430-2(b)(2), (c)(3)(i)(B), (c)(3)(ii)(C), and (c)(5); §§ 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430-5(a) and (c)(3), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430-2(c)(5) is applicable March 23, 1993. Sections 301.7430-2(b)(2), (c)(3)(i)(B), and (c)(3)(ii)(C); 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and 301.7430-5(a) and (c)(3) are applicable for administrative proceedings commenced after July 30, 1996. Sections 301.7430-1(e), 301.7430-2(c)(2), 7430-3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

[T.D. 8725, 62 FR 39119, July 22, 1997, as amended by T.D. 9050, 68 FR 14320, Mar. 25, 2003]

§ 301.7430-7 Qualified offers.

(a) *In general.* Section 7430(c)(4)(E) (the qualified offer rule) provides that a party to a court proceeding satisfying the timely filing and net worth requirements of section 7430(c)(4)(A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted the last qualified offer of the party as defined in section 7430(g). For

purposes of this section, the term *judgment* means the cumulative determinations of the court concerning the adjustments at issue and litigated to a determination in the court proceeding. In making the comparison between the liability under the qualified offer and the liability under the judgment, the taxpayer's liability under the judgment is further modified by the provisions of paragraph (b)(3) of this section. The provisions of the qualified offer rule do not apply if the taxpayer's liability under the judgment, as modified by the provisions of paragraph (b)(3) of this section, is determined exclusively pursuant to a settlement, or to any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to the Internal Revenue Code (Code), and any action to restrain disclosure under section 6110(f). If the qualified offer rule applies to the court proceeding, the determination of whether the liability under the qualified offer would have equaled or exceeded the liability pursuant to the judgment is made by reference to the last qualified offer made with respect to the tax liability at issue in the administrative or court proceeding. An award of reasonable administrative and litigation costs under the qualified offer rule only includes those costs incurred on or after the date of the last qualified offer and is limited to those costs attributable to the adjustments at issue at the time the last qualified offer was made that were included in the court's judgment other than by reason of settlement. The qualified offer rule is inapplicable to reasonable administrative or litigation costs otherwise awarded to a taxpayer who is a prevailing party under any other provision of section 7430(c)(4). This section sets forth the requirements to be satisfied for a taxpayer to be treated as a prevailing party by reason of the taxpayer making a qualified offer, as well as the circumstances leading to the application of the exceptions, special rules, and coordination provisions of the qualified offer rule. Furthermore, this section sets forth the elements necessary for

an offer to be treated as a qualified offer under section 7430(g).

(b) *Requirements for treatment as a prevailing party based upon having made a qualified offer*—(1) *In general.* In order to be treated as a prevailing party by reason of having made a qualified offer, the liability of the taxpayer for the type or types of tax and the taxable year or years at issue in the proceeding (as calculated pursuant to paragraph (b)(2) of this section), based on the last qualified offer (as defined in paragraph (c) of this section) made by the taxpayer in the court or administrative proceeding, must equal or exceed the liability of the taxpayer pursuant to the judgment by the court for the same type or types of tax and the same taxable year or years (as calculated pursuant to paragraph (b)(3) of this section). Furthermore, the taxpayer must meet the timely filing and net worth requirements of section 7430(c)(4)(A)(ii). If all of the adjustments subject to the last qualified offer are settled prior to the entry of the judgment by the court, the taxpayer is not a prevailing party by reason of having made a qualified offer. The taxpayer may, however, still qualify as a prevailing party if the requirements of section 7430(c)(4)(A) are met. If one or more adjustments covered by a qualified offer (see paragraph (c)(3)) are settled following a ruling by the court that substantially resolves those adjustments, then those adjustments will not be treated as having been settled prior to the entry of the judgment by the court and instead will be treated as amounts included in the judgment as a result of the court's determinations. For purposes of the preceding sentence, rulings relating to discovery, admissibility of evidence, and burden of proof are not rulings that substantially resolve adjustments covered by a qualified offer.

(2) *Liability under the last qualified offer.* For purposes of paragraph (b)(1) of this section, the taxpayer's liability under the last qualified offer is the change in the taxpayer's liability that would have resulted if the United States had accepted the taxpayer's last qualified offer on all of the adjustments that were at issue in the administrative or court proceeding at the time that the offer was made compared

to the amount shown on the return or returns (or as previously adjusted). The portion of a taxpayer's liability that is attributable to adjustments raised by either party after the making of the last qualified offer is not included in the calculation of the liability under that offer. The taxpayer's liability under the last qualified offer is calculated without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding. For example, the parties may stipulate that the taxpayer's liability will be resolved in accordance with the outcome of an alternative dispute resolution proceeding or a separate court proceeding, such as a probate, tort liability, or trademark action. Furthermore, the taxpayer's liability under the last qualified offer is calculated without regard to interest, unless the taxpayer's liability for, or entitlement to, interest is a contested issue in the administrative or court proceeding and is one of the adjustments included in the last qualified offer.

(3) *Liability pursuant to the judgment.* For purposes of paragraph (b)(1) of this section, the taxpayer's liability pursuant to the judgment is the change in the taxpayer's liability resulting from amounts contained in the judgment as a result of the court's determinations, and amounts contained in settlements not included in the judgment, that are attributable to all adjustments that were included in the last qualified offer compared to the amount shown on the return or returns (or as previously adjusted). This liability includes amounts attributable to adjustments included in the last qualified offer and settled by the parties prior to the entry of judgment regardless of whether those amounts are actually included in the judgment entered by the court. The taxpayer's liability pursuant to the judgment does not include amounts attributable to adjustments that are not included in the last qualified offer, even if those amounts are actually included in the judgment entered by the court. The taxpayer's liability under the judgment is calculated without regard to adjustments that the parties

have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding. Furthermore, the taxpayer's liability pursuant to the judgment is calculated without regard to interest, unless the taxpayer's liability for, or entitlement to, interest is a contested issue in the administrative or court proceeding and is one of the adjustments included in the last qualified offer. Where adjustments raised by either party subsequent to the making of the last qualified offer are included in the judgment entered by the court, or are settled prior to the court proceeding, the taxpayer's liability pursuant to the judgment is calculated by treating the subsequently raised adjustments as if they had never been raised.

(c) *Qualified offer*—(1) *In general.* A qualified offer is defined in section 7430(g) to mean a written offer which—

(i) Is made by the taxpayer to the United States during the qualified offer period;

(ii) Specifies the offered amount of the taxpayer's liability (determined without regard to interest, unless interest is a contested issue in the proceeding);

(iii) Is designated at the time it is made as a qualified offer for purposes of section 7430(g); and

(iv) By its terms, remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

(2) *To the United States.* (i) A qualified offer is made to the United States when it is delivered to the office or personnel within the Internal Revenue Service, Office of Appeals, Office of Chief Counsel (including field personnel) or Department of Justice that has jurisdiction over the tax matter at issue in the administrative or court proceeding. If those offices or persons are unknown to the taxpayer making the qualified offer, the taxpayer may deliver the offer to the appropriate office, as follows:

(A) If the taxpayer's initial pleading in a court proceeding has been answered, the taxpayer may deliver the offer to the office that filed the answer.

(B) If the taxpayer's petition in the Tax Court has not yet been answered, the taxpayer may deliver the offer to the Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

(C) If the taxpayer's initial pleading in any Federal court, other than the Tax Court, has not yet been answered, the taxpayer may deliver the offer to the Attorney General of the United States, 950 Pennsylvania Ave., NW., Washington, DC 20530-0001. For a suit brought in a United States district court, a copy of the offer should also be delivered to the United States Attorney for the district in which the suit was brought.

(D) In any other situation, the taxpayer may deliver the offer to the office that sent the taxpayer the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(ii) Until an offer is received by the appropriate personnel or office under this paragraph (c)(2), it is not considered to have been made, with the following exception. If the offer is deposited in the United States mail, in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the appropriate personnel or office under this paragraph (c)(2), the date of the United States postmark stamped on the cover in which the offer is mailed shall be deemed to be the date of receipt of that offer by the addressee. If any offer is deposited with a designated delivery service, as defined in section 7502(f)(2), in lieu of the United States mail, the provisions of section 7502(f)(1) shall apply in determining whether that offer qualifies for this exception.

(3) *Specifies the offered amount.* A qualified offer specifies the offered amount if it clearly specifies the amount for the liability of the taxpayer, calculated as set forth in paragraph (b)(2) of this section. The offer may be a specific dollar amount of the total liability or a percentage of the adjustments at issue in the proceeding at the time the offer is made. This amount must be with respect to all of the adjustments at issue in the administrative or court proceeding at the

time the offer is made and only those adjustments. The specified amount must be an amount, the acceptance of which by the United States will fully resolve the taxpayer's liability, and only that liability (determined without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding, or interest, unless interest is a contested issue in the proceeding) for the type or types of tax and the taxable year or years at issue in the proceeding. In cases involving multiple tax years, if adjustments in different tax years arise from separate and distinct issues such that the resolution of issues in one or more tax years will not affect the taxpayer's liability in one or more of the other tax years in the proceeding, then a qualified offer may be made for less than all of the tax years involved. A qualified offer, however, must resolve all of the issues for the tax years covered by the offer and also must cover all tax years in the proceeding affected by those issues. A tax year (affected year) is affected by an issue if the treatment of the issue in another tax year involved in the proceeding necessarily affects the treatment of the issue in the affected year.

(4) *Designated at the time it is made as a qualified offer.* An offer is not a qualified offer unless it designates in writing at the time it is made that it is a qualified offer for purposes of section 7430(g). An offer made at a time when one or more adjustments not included in the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals have been raised by the taxpayer and remain unresolved, is not considered to be a qualified offer unless contemporaneously or prior to the making of the offer, the taxpayer has provided the United States with the substantiation and legal and factual arguments necessary to allow for informed consideration of the merits of those adjustments. For example, a taxpayer will be considered to have provided the United States with the necessary substantiation and legal and factual arguments if the taxpayer (or a

recognized representative of the taxpayer described in § 601.502 of this chapter) participates in an Appeals office conference, participates in an Area Counsel conference, or confers with the Department of Justice, and at that time, discloses all relevant information. All relevant information includes, but is not limited to, the legal and factual arguments supporting the taxpayer's position on any adjustments raised by the taxpayer after the issuance of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. A taxpayer has disclosed all relevant information if the taxpayer has supplied sufficient information to allow informed consideration of the taxpayer's tax matter to the extent the information and its relevance were known or should have been known to the taxpayer at the time of the conference.

(5) *Remains open.* A qualified offer must, by its terms, remain open for acceptance by the United States from the date it is made, as defined in paragraph (c)(2)(ii) of this section, until the earliest of the date it is rejected in writing by a person with authority to reject the offer, the date the trial begins, or the 90th day after being received by the United States. The offer, by its written terms, may remain open after the occurrence of one or more of the above-referenced events. Once made, the period during which a qualified offer remains open may be extended by the taxpayer prior to its expiration, but an extension cannot be used to make an offer meet the minimum period for remaining open required by this paragraph (c)(5).

(6) *Last qualified offer.* A taxpayer may make multiple qualified offers during the qualified offer period. For purposes of the comparison under paragraph (b) of this section, the making of a qualified offer supersedes any previously made qualified offers. In making the comparison described in paragraph (b) of this section, only the qualified offer made most closely in time to the end of the qualified offer period is compared to the taxpayer's liability under the judgment.

(7) *Qualified offer period.* To constitute a qualified offer, an offer must be made during the qualified offer period. The qualified offer period begins on the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent to the taxpayer. For this purpose, the date of the notice of claim disallowance will begin the qualified offer period in a refund case. If there has been no notice of claim disallowance in a refund case, the qualified offer period begins on the date on which the answer or other responsive pleading is filed with the court. The qualified offer period ends on the date which is thirty days before the date the case is first set for trial. In determining when the qualified offer period ends for cases in the Tax Court and other Federal courts using calendars for trial, a case will be considered set for trial on the date scheduled for the calendar call. A case may be removed from a trial calendar at any time. Thus, a case may be removed from a trial calendar before the date that precedes by thirty days the date scheduled for that trial calendar. The qualified offer period does not end until the case remains on a trial calendar on the date that precedes by 30 days the scheduled date of the calendar call for that trial session. The qualified offer period may not be extended beyond the periods set forth in this paragraph (c)(7), although the period during which a qualified offer remains open may extend beyond the end of the qualified offer period.

(d) [Reserved]

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Definition of a judgment. The Internal Revenue Service (IRS) audits Taxpayer A for year X and issues a notice of proposed deficiency (30-day letter) proposing to disallow deductions 1, 2, 3, and 4. A files a protest and participates in a conference with the Internal Revenue Service Office of Appeals (Appeals). Appeals allows deduction 1, and issues a statutory notice of deficiency for deductions 2, 3, and 4. A's petition to the United States Tax Court for year X never mentions deduction 2. Prior to trial, A concedes deduction 3. After the trial, the Tax Court issues an opinion allowing A to deduct

a portion of deduction 4. As used in paragraph (a) of this section, the term judgment means the cumulative determinations of the court concerning the adjustments at issue in the court proceeding. Thus, the term judgment does not include deduction 1 because it was never at issue in the court proceeding. Similarly, the term judgment does not include deduction 2 because it was not placed at issue by A in the court proceeding. Although deduction 3 was at issue in the court proceeding, it is not included in the term judgment because it was not determined by the court, but rather by concession or settlement. For purposes of section 7430(c)(4)(E), the term judgment only includes the portion of deduction 4 disallowed by the Tax Court.

Example 2. Liability under the offer and liability under the judgment. Assume the same facts as in *Example 1* except that A makes a qualified offer after the Appeals conference, which is not accepted by the IRS. A's offer is with respect to all adjustments at issue at that time. Those adjustments are deductions 2, 3, and 4. At the conclusion of the litigation, A's entitlement to an award based upon the qualified offer will depend, among other things, on a comparison of the change in A's liability for income tax for year X resulting from the judgment of the Tax Court with the change that would have resulted had the IRS accepted A's qualified offer. In making this comparison, the term judgment (as discussed in *Example 1*) is modified by including the amounts of settled or conceded adjustments that were at issue at the time the qualified offer was made. Any settled or conceded adjustments that were not at issue at the time the qualified offer was made, either because the settlement or concession occurred before the offer or because the adjustment was not raised until after the offer, are not included in the comparison. Thus, A's offer on deductions 2, 3, and 4 is compared with the change in A's liability resulting from the Tax Court's determination of deduction 4, and the concessions of issues 2 and 3 by A.

Example 3. Offer must resolve full liability. Assume the same facts as in *Example 2* except that A's offer after the Appeals conference explicitly states that it is only with respect to adjustments 2 and 3 and not with respect to adjustment 4. Even if A's liability pursuant to the judgment, calculated under paragraph (b)(3) of this section as illustrated in *Example 2*, is equal to or less than it would have been had the IRS accepted A's offer after the Appeals conference, A is not a prevailing party under section 7430(c)(4)(E). A qualified offer must include all adjustments at issue at the time the offer is made. Since A's offer excluded adjustment 4, which was an adjustment at issue at the time the offer was made, it does not constitute a qualified offer pursuant to paragraph (b)(2) of this section.

Example 4. Offer must resolve full liability. Assume the same facts as in *Example 1*, except that A makes a qualified offer that is accepted by the IRS. After the offer is accepted, A attempts to reduce the amount A will pay pursuant to the offer by applying net operating loss carryovers to the years in issue. Because the net operating losses were not at issue when the offer was made, A's offer was a qualified offer. Whether A is entitled to apply net operating losses to reduce the amount stated in the offer will depend upon the application of contract principles, local court rules, and, because net operating losses are at issue, section 6511(d) and related provisions.

Example 5. Qualified offer rule for multiple tax years, partial resolution offer is a qualified offer. Taxpayer B receives a notice of deficiency for taxable years 2001, 2002, and 2003. For 2001, the statutory notice disallows business deductions. For 2002, the statutory notice increases income for unreported lottery winnings. For 2003, the statutory notice disallows a child care credit. B submits a qualified offer only with respect to 2002. Since the adjustments for the three tax years are separate and distinct, B may submit a qualified offer for a single year. If B's liability under the judgment is equal to or less than the qualified offer with respect to 2002, irrespective of 2001 and 2003, B is a prevailing party for 2002 for purposes of section 7430(g). Assuming B satisfies the remaining requirements of section 7430, B may recover reasonable administrative and litigation costs that are attributable to 2002 from the date of the qualified offer. To qualify for any costs with respect to 2001 or 2003, B must satisfy the requirements of section 7430(c)(4).

Example 6. Qualified offer rule for multiple tax years, partial resolution offer is not a qualified offer. Assume the same facts as in *Example 5* except that with respect to 2002, in addition to increasing B's income for the unreported lottery winnings, the statutory notice also disallows a charitable contribution deduction. B submits a settlement offer that purports to be a qualified offer, but only covers the unreported lottery winnings. B's offer is not a qualified offer because it does not address the charitable contribution issue, and thus, does not fully resolve B's liability for 2002.

Example 7. Qualified offer rule for multiple tax years, partial resolution offer is not a qualified offer. Taxpayer C receives a notice of deficiency for taxable years 2001, 2002, and 2003 adjusting the amount of a depreciation deduction due to the Internal Revenue Service's increase to the recovery period. C submits a settlement offer relating only to 2003 that purports to be a qualified offer. C's offer is not a qualified offer because the issue in the three tax years is not separable given that the treatment of the issue in one of the years necessarily affects the treatment of

the issue in the other years, and C's offer only applies to one of the years in the proceeding. In cases involving multiple tax years with nonseparable tax issues affecting all tax years, an offer is not a qualified offer unless it resolves the liability for all tax years at issue in the administrative or judicial proceeding.

Example 8. Qualified offer rule inapplicable when all issues settled. Taxpayer D receives a notice of proposed deficiency (30-day letter) proposing to disallow both a personal interest deduction in the amount of \$10,000 (Adjustment 1), and a charitable contribution deduction in the amount of \$2,000 (Adjustment 2), and to include in income \$4,000 of unreported interest income (Adjustment 3). D timely files a protest with Appeals. At the Appeals conference, D presents substantiation for the charitable contribution and presents arguments that the interest paid was deductible mortgage interest and that the interest received was held in trust for Taxpayer E. At the conference, D also provides the Appeals officer assigned to D's case a written offer to settle the case for a deficiency of \$2,000, exclusive of interest. The offer states that it is a qualified offer for purposes of section 7430(g) and that it will remain open for acceptance by the IRS for a period in excess of 90 days. After considering D's substantiation and arguments, the Appeals Officer accepts the \$2,000 offer to settle the case in full. Although D's offer is a qualified offer, because all three adjustments contained in the qualified offer were settled, the qualified offer rule is inapplicable.

Example 9. Qualified offer rule inapplicable when all issues contained in the qualified offer are settled; subsequently raised adjustments ignored. Assume the same facts as in *Example 8* except that D's qualified offer was for a deficiency of \$1,800 and the IRS rejected that offer. Subsequently, the IRS issued a statutory notice of deficiency disallowing the three adjustments contained in *Example 8*, and, in addition, disallowing a home office expense in the amount of \$5,000 (Adjustment 4). After petitioning the Tax Court, D presents the field attorney assigned to the case with a written offer, which is not designated as a qualified offer for purposes of section 7430(g), to settle the three adjustments that had been the subject of the qualified offer, plus adjustment 4, for a total deficiency of \$2,500. After negotiating with D, a settlement is reached on the three adjustments that were the subject of the rejected qualified offer, for a deficiency of \$1,800. Adjustment 4 is litigated in the Tax Court and the court determines that D is entitled to the full \$5,000 deduction for that adjustment. Consequently, a decision is entered by the Tax Court reflecting the \$1,800 settlement amount, which matches exactly the amount of D's only qualified offer in the case. Although the determined liability for adjust-

ments 1, 2, and 3 equals that of the rejected qualified offer, because all three adjustments contained in the qualified offer were settled, the qualified offer rule is inapplicable.

Example 10. Exclusion of adjustments made after the qualified offer is made. Assume the same facts as in *Example 9* except the settlement is reached only on adjustments 1 and 2, for a liability of \$1,500. Adjustments 3 and 4 are tried in the Tax Court and in accordance with the court's opinion, the taxpayer has a \$300 deficiency attributable to adjustment 3, and a \$1,550 deficiency attributable to adjustment 4. Consequently, a decision is entered reflecting the \$1,500 settled amount, the \$300 liability on adjustment 3, and the \$1,550 liability on adjustment 4. The \$3,350 deficiency reflected in the Tax Court's decision exceeds the last (and only) qualified offer made by D. For purposes of determining whether D is a prevailing party as a result of having made a qualified offer in the proceeding, the liability attributable to adjustment 4, which was raised after the last qualified offer was made, is not included in the comparison of D's liability under the judgment with D's offered liability under the last qualified offer. Thus, D's \$1,800 liability under the judgment, as modified for purposes of the qualified offer rule comparison, is equal to D's offered liability under the last qualified offer. Because D's liability under the last qualified offer equals or exceeds D's liability under the judgment, as calculated under paragraph (b)(3) of this section, D is a prevailing party for purposes of section 7430. Assuming D satisfies the remaining requirements of section 7430, D may recover those reasonable administrative and litigation costs attributable to adjustment 3. To qualify for any further award of reasonable administrative and litigation costs, D must satisfy the requirements of section 7430(c)(4)(A).

Example 11. Qualified offer in a refund case. Taxpayer E timely files an amended return claiming a refund of \$1,000. This refund claim results from several omitted deductions which, if allowed, would reduce E's tax liability from \$10,000 to \$9,000. E receives a notice of claim disallowance and files a complaint with the appropriate United States District Court. Subsequently, E makes a qualified offer for a refund of \$500. The offer is rejected and after trial the court finds E is entitled to a refund of \$700. The change in E's liability from the tax shown on the return that would have resulted from the acceptance of E's qualified offer is a reduction in that liability of \$500. The change in E's liability from the tax shown on the return resulting from the judgment of the court is a reduction in that liability of \$700. Because E's liability under the qualified offer exceeds E's liability under the judgment, E is a prevailing party for purposes of section 7430. Assuming E satisfies the remaining requirements of section 7430, E may recover those

reasonable litigation costs incurred on or after the date of the qualified offer. To qualify for any further award of reasonable administrative and litigation costs E must satisfy the requirements of section 7430(c)(4)(A).

Example 12. End of qualified offer period when case is removed from Tax Court trial calendar more than 30 days before scheduled trial calendar. Taxpayer F has petitioned the Tax Court in response to the issuance of a notice of deficiency. F receives notice that the case will be heard on the July trial session in F's city of residence. The scheduled date for the calendar call for that trial session is July 1st. On May 15th, F's motion to remove the case from the July trial session and place it on the October trial session for that city is granted. The scheduled date for the calendar call for the October trial session is October 1st. On May 31st, F delivers a qualified offer to the field attorney assigned to the case. On August 31st, F delivers a revised qualified offer to the field attorney assigned to the case. Neither offer is accepted. The case is tried during the October trial session, and at some time thereafter, a decision is entered by the court. Assume the judgment in the case, as calculated under paragraph (b)(3) of this section, is greater than the amount offered, as calculated under paragraph (b)(2) of this section, in the qualified offer delivered on May 31st, but less than the amount offered, as similarly calculated, in the qualified offer delivered on August 31st. Because the qualified offer period did not end until September 1st, and the offer of August 31st otherwise satisfied the requirements of paragraph (c) of this section, the offer delivered on August 31st is a qualified offer. Furthermore, because the August 31st qualified offer is closer in time to the end of the qualified offer period than the May 31st qualified offer, the August 31st qualified offer is the last qualified offer made by F. Consequently, the August 31st offer is the qualified offer that is compared to the judgment for purposes of determining whether F is a prevailing party under section 7430(c)(4)(E). Because F's liability under the August 31st qualified offer equals or exceeds F's liability under the judgment as calculated under paragraph (b)(3) of this section, F is a prevailing party for purposes of section 7430.

Example 13. End of qualified offer period when case is removed from Tax Court trial calendar less than 30 days before scheduled trial calendar. Assume the same facts as in *Example 12* except that F's motion was granted on June 15th. Because the qualified offer period ended on June 1st when the case remained on the July trial session on the date that preceded by 30 days the scheduled date of the calendar call for that trial session, the offer delivered on May 31st was F's last qualified offer. The August 31st offer is not a qualified offer for purposes of this rule. Consequently, F is not a prevailing party under the quali-

fied offer rule. Therefore, F must satisfy the requirements of section 7430(c)(4)(A) to qualify for any award of reasonable administrative and litigation costs.

Example 14. When a qualified offer can be made and to whom it must be made. During the examination of Taxpayer G's return, the IRS issues a notice of deficiency without having first issued a 30-day letter. After receiving the notice of deficiency G timely petitions the Tax Court. The next day G mails an offer to the office that issued the notice of deficiency, which offer satisfies the requirements of paragraphs (c)(3) through (6) of this section. This is the only written offer made by G during the administrative or court proceeding, and by its terms it is to remain open for a period in excess of 90 days after the date of mailing to the office issuing the notice of deficiency. The office that issued the notice of deficiency transmitted the offer to the field attorney with jurisdiction over the Tax Court case. After answering the case, the field attorney refers the case to Appeals pursuant to Rev. Proc. 87-24 (1987-1 C.B. 720). See § 601.601(d)(2)(ii)(b) of this chapter. After careful consideration, Appeals rejects the offer and holds a conference with G during which some adjustments are settled. The remainder of the adjustments are tried in the Tax Court and G's liability resulting from the Tax Court's determinations, when added to G's liability resulting from the settled adjustments, is less than G's liability would have been under the offer rejected by Appeals. Because the Tax Court case had not yet been answered when the offer was sent, G properly mailed the offer to the office that issued the notice of deficiency. Thus, G's offer satisfied the requirements of paragraph (c)(2) of this section. Furthermore, even though G did not receive a 30-day letter, G's offer was made after the beginning of the qualified offer period, satisfying the requirements of paragraph (c)(7) of this section, because the issuance of the statutory notice provided G with notice of the IRS's determination of a deficiency, and the docketing of the case provided G with an opportunity for administrative review in the Internal Revenue Service Office of Appeals under Rev. Proc. 87-24. See § 601.601(d)(2)(ii)(b) of this chapter. Because G's offer satisfied all of the requirements of paragraph (c) of this section, the offer was a qualified offer and G is a prevailing party.

Example 15. Substitution of parties permitted under last qualified offer. Taxpayer H receives a 30-day letter and participates in a conference with the Office of Appeals but no agreement is reached. Subsequently, H receives a notice of deficiency and petitions the Tax Court. Upon receiving the Internal Revenue Service's answer to the petition, H sends a qualified offer to the field attorney who signed the answer, by United States mail. The qualified offer stated that it would

remain open for more than 90 days. Thirty days after making the offer, H dies and, on motion under Rule 63(a) of the Tax Court's Rules of Practice and Procedure by H's personal representative, I is substituted for H as a party in the Tax Court proceeding. I makes no qualified offers to settle the case and the case proceeds to trial, with the Tax Court issuing an opinion partially in favor of I. Even though I was not a party when the qualified offer was made by H, that offer constitutes a qualified offer because by its terms, when made, it was to remain open until at least the earlier of the date it is rejected, the date of trial, or 90 days. If the liability of I under the qualified offer, as determined under paragraph (b)(2) of this section, equals or exceeds the liability under the judgment of the Tax Court, as determined under paragraph (b)(3) of this section, I will be a prevailing party for purposes of an award of reasonable litigation costs under section 7430.

(f) *Effective date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after December 24, 2003.

[T.D. 9106, 68 FR 74850, Dec. 29, 2003; T.D. 9106, 69 FR 4059, Jan. 28, 2004]

§ 301.7430-8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430-5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative

proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433-2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.